



AIA South Carolina

A Chapter of The American Institute of Architects

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AMERICAN COUNCIL OF ENGINEERING COMPANIES
of South Carolina

11 February 2008

John White
State Engineer
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. White:

The South Carolina Chapter of the American Institute of Architects (AIASC) and the American Council of Engineering Companies of South Carolina (ACEC) have reviewed the South Carolina procurement process and the interface of the A/E community with the Office of the State Engineer as you requested. Each organization has formed subcommittees from around the State and met with our respective representatives. Subsequently we have met together to review our comments and to provide a collective list of issues or concerns back to your committee. Our hope is that these issues will help guide future adjustments in OSE requirements and procedures for procurement of professional services and other construction related areas.

In the time allotted for this effort we have not been able to prioritize the issues, so we have attached all comments and will be happy to discuss in the next OSE Task Force meeting on Wednesday. We have reviewed our comments with AGC representatives and in turn have reviewed their comments as well.

Thank you for including our organizations in this review process. We look forward to further discussions.

Sincerely,

Michael S. Watson, AIA
PRESIDENT
AIA SOUTH CAROLINA

Jerry Timmons, P.E.
ACEC - SC

Attachment: p. 2-7

c: Joe Jones, Jerry Timmons/ACEC - SC
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I. OSE REVIEW TIMES:

ISSUE: Time required for OSE code reviews can severely impact design and construction schedules.

BACKGROUND: OSE reviews (4 or more on each project) create many opportunities for a slow-down. Quite often the A/E will receive a detailed comment that is beyond the scope of the level of the submittal, i.e. a CD level comment on an SD or DD submittal. This process can quickly turn circular when the OSE PM says the submittal is incomplete. The OSE review time of 45 days does not begin until a submittal is declared "complete" – see 5.2.4 & 5.2.8. If the A/E proceeds to work on the project with the approval of the agency and "at risk", they can be well down the road or even complete with the next phase before getting OSE comments.

SUGGESTED RESOLUTION: We believe the A/E community in general appreciates the oversight of the OSE in the design documents review process. In many many cases, the A/E and the OSE collaborate to solve code and life-safety challenges. From our perspective, we believe there are two parallel approaches needed:

1. Streamline the review process. Conduct initial review meetings with the A/E at the beginning of the Schematic phase and clear up any need for additional information or major issues to be reviewed or discussed. Leave all other issues that would slow down the process until the next phase, do not hold up the process except in extreme circumstances.
2. Add OSE staff in order to spread out the work load. You might also consider periodic meetings in-house at OSE to coordinate the review process amongst the disciplines.

II. REVIEW OF PROCEDURES AND DISCUSSIONS/TRAINING FOR OSE/ AGENCIES & A/E'S.

ISSUE: This is mainly an issue of communication and understanding between OSE, Agencies, A/E's and Constructors.

Background: In the past OSE has conducted statewide meetings to review the Manual and procurement and construction procedures. In recent history, these meetings were divided into separate sessions for Agencies and A/E's, Constructors. Changes were offered without input from the building community. It has been a few years where no meetings have been held.

SUGGESTED RESOLUTION: As this Task Force seeks input from all stakeholders for State construction, it might also serve as a good source for substantive discussions of common issues to be shared statewide. If such a conference were held, representatives from the stakeholders' organizations could be engaged to prepare program presentations to foster understanding, review trends, and best practices in addition to procedural discussions.

III. OSE ROLE CLARIFICATION

Specific Issue: Clarity regarding who OSE representatives serve. In the past, OSE representatives have expressed both the following positions in this regard:

1. OSE representatives are, in essence, consultants to state agencies, taking the position that state agencies are OSE clients; and,
2. OSE representatives have expressed their position as being interpreters of the State Manual and the State's Chief Building Officials, and tasked to serve all parties involved in the design and construction process through a unified interpretation of the Codes and the Manual.

Background: The OSE functions in three basic capacities:

1. As the Chief Procurement Officer (CPO) for the State,
2. As the Chief Building Official (CBO) for State Projects, and
3. As the State Fire Marshal for State Projects.

As CPO, the OSE representative has to work in the best interest of the Agency. This can create conflicts of interest between CPO duties to state agencies and the neutrality required as the Chief Building Official/Fire Marshal duties and responsibilities. It's typically the special issues that later become apparent.

SUGGESTED RESOLUTION: Assign two different OSE representatives to a project, one serving as the CPO, the other as the CBO. This could remove potential personal conflicts. Of course, one of the problems with this will be the availability of personnel within OSE.

1. OSE representative serve as neutral interpreters of OSE manual, providing guidance to both Agency and A/E as required to successfully applying meaning and intent of Manual components.

IV. CONTRACT NEGOTIATIONS:

Specific Issue: Contract negotiations and the responsibility of both agency and architect to successfully negotiate fees and associated services within standard application of Manual components.

Background: As the Chief Procurement Officers, OSE representatives are often absent from negotiations, leaving agency representatives who might otherwise be unfamiliar with the OSE manual to their own interpretation of contract terminology and appropriateness of application. This creates inconsistencies in contracts and application of Manual. It also precipitates the "threat" of going to the number 2 firm at early signs of contract stalemate.

SUGGESTED RESOLUTION:

1. OSE representative should be an engaged member of the contract negotiating team, providing guidance to both A/E and Agency representatives to move the negotiations to a successful completion. He/she has the responsibility to assure proper procedures and compliance with the Procurement Law.
2. The selection process for A/E's is an expensive exercise for all concerned, both in time and investment in presentation tools by the A/E. Once ranking of firms has been established based upon interviews, both parties should be equally responsible for the successful negotiations of the A/E contract. If negotiations are unsuccessful, it is recommended that a process be established requiring the agency representative to submit to Chief Engineer of OSE specific documentation as to why negotiations failed, requiring direction from Chief Engineer to either continue

- negotiation efforts or determine if sufficient cause has deemed it necessary to proceed to number 2 ranked firm.
3. One consolidated contract format that allows no modifications of the basic language approved by OSE should be developed as a template available by agency representatives and A/E's. Only project specific information should be allowed for infill in the contract.
 4. Obtain special approval from the AIA Documents to use and modify their computerized document and obtain approval to distribute a template to all parties signing a contract with the State for professional services.
 - a. NOTE: Discussions with AIA National representative has been conducted and this option is currently being explored. OSE to provide numbers of contracts per year in recent years. AIA to address licensing and branding issues. Goal is to have SC amendments incorporated into AIA docs for clarity and ease of use.

V. LEED Requirements

ISSUE: Expense required for LEED Silver on State Projects.

BACKGROUND: State of South Carolina in Bill H3034, Energy Independence and Sustainability Act of 2007 requires LEED Silver Certification on state projects.

1. Achieve LEED Silver or 2 Green Globes.
2. Achieve 40% of available energy consumption credits in EA_c1; 21% energy savings for 4 LEED credits. (may be waived by OSE if not economically feasible). Justify to State Budget & Control Board.
3. Document Life Cycle Cost analysis.
4. Third party commissioning agent must inspect property in 5th, 10th and 15th year.
5. Project must be registered with USGBC prior to 1st building permit application
6. OSE will monitor project for energy & water use from 1st year after completion, for 19 years.

State funded projects that require B&CB approval are:

1. New building 10,000 sf or larger
2. Renovation of 50% or more building value
3. Change of occupancy
4. Interior upfit of 7,500 sf.
5. Some exceptions.

This requirement will add significant hours to design and CA. Additional services are currently used to address LEED.

SUGGESTED RESOLUTION:

Since most projects will be required to be LEED Silver certified, does it make sense to increase the basic fee percentages in lieu of additional services? Also, documentation of Life Cycle Cost will increase consultant fees.

VI. CA SERVICES

ISSUE: Scope description for Construction Administrative services in the OSE manual and Article 12 is not supported by available fees, especially on smaller projects.

BACKGROUND: OSE requires weekly visits (on average) to the site in both the Manual (Chapter 7, article 7.7.B.1.) and in the Article 12 (2.6.5.1). Factoring for this time, along with other CA responsibilities, very often exceeds compensation provided in Basic Services, especially for projects under \$4 million. In addition, due to the lack of performance by contractors, the architect is often forced to provide additional services due to inadequate/incomplete submittals, multiple substantial or final completion inspections, or other visits to the site to address inadequate contractor performance.

SUGGESTED RESOLUTION: Our belief is that comprehensive CA services by the Architect are essential to provide a quality, code compliant project for the owner; therefore the issue is about adequate compensation for these services. Suggestions for resolving this conflict include:

1. Develop a more direct and enforceable system of compensation due to lack of performance by the contractor. Compensation for additional time due to multiple submittals, redundant site visits, and other contractor performance issues should be additional services paid by the Owner, but with a mechanism to force the contractor to provide a credit by change order equal to this compensation.
2. On projects where the standard basic services fee does not support weekly site visits, the architect and owner should be able to negotiate a number of visits as supported by the fee. If additional visits are required in excess of this agreed upon number, additional compensation should be provided to the architect.

VII. OTHER TOPICS OF INTEREST:

1. Value of Good Design
 - a. Good architecture and engineering improves the investment value of State owned buildings and this concept should be clearly stated in first page of OSE manual
 - 1) Better student performance
 - 2) Better employee performance
 - 3) Better patient outcomes
 - 4) Lower annual operating costs
 - 5) Longer lasting functional buildings
 - b. Therefore AE services should not be considered a commodity but rather AE services should be considered to be similar to that as an investment advisor/facilitator. Some reference to the importance of good design in the manual would be appreciated by the A/E community.
2. Resolution of Errors and Omissions
 - a. OSE fee schedule and competitive bidding system inevitably result in Change Orders that can be traced back to AE.
 - 1) Agency should expect to have Change Orders directly or indirectly caused by errors and omissions and develop an appropriate Change Order contingency,

- 2) Agency and AE should agree (in advance of construction) a target range (percentage of construction cost) below which will not be back charged to AE.
 - 3) Regular Agency/AE meetings should occur during construction to identify which Change Orders are caused by AE errors and omissions.
3. OSE inspectors – State employees or subcontractors?
- a. The State has an obligation to inspect construction in progress
 - 1) Inspectors should have credentials (education and experience) applicable to the project size and type.
 - 2) If OSE subcontracts the inspection responsibilities, Agency and AE should be able to review inspector qualifications in advance of construction.
 - 3) If OSE continues to subcontract inspection responsibilities, more firms must be able to compete for this work.

VIII. COMMENTS FROM ACEC:

A meeting of representatives from several ACEC-SC member firms occurred on January 21, 2008 to discuss various issues concerning the operations of the Office of State Engineer and the current Procurement Code. The following are comments developed during that meeting.

- OSE review should be consistent. One Project Manager's interpretation of codes does not necessarily agree with another Project Manager's review.
- OSE review should be objective and not subjective.
- Maintain same PM throughout the Review Process and the Construction Phase.
- OSE reviews should only focus on contract document accuracy and code compliance (not personal preference).
- Two reviews would be sufficient on most projects (DD & CD).
- Require an initial presentation by the A/E to OSE Project Manager on projects greater than \$1M, probably at the schematic phase.
- Consider electronic submittals – (paperless)
- Increase IDC limits. Increase Small Contract limit.
- Provide mechanism for a project to exceed limit of Small Contract or the Work Order limit when the scope of work changes and a Contract Modification is justified.
- Increase Agency limits, fully utilize delegated review authority.
- Required SCDHEC Erosion & Control Inspections should be "Additional Services" (Analogy would be Geotechnical Services).
- Preference should be given to in-state firms.
- Why is "workload" a State Evaluation Criteria? Have you ever heard an A/E state that they had too much work to accomplish your project in a timely manner?
- Scope of work should be provided for all projects.
- Pre proposal meetings are helpful.
- Consider prequalifying A/Es.
 - Yearly A/E Qualification statement would be posted on OSE website.
 - Projects would be advertised by SCBO.
 - A/Es would submit letter of interest to Agency.
 - Shortlist would be developed by reviewing qualification statement on OSE website.

A/E would still have the option of submitting a Qualification Package.

- Permitting is becoming ever increasingly, time consuming and should be "Additional Services".
- Agency should have change order approval authority with an upper limit. Reduce delays; time consuming waiting on OSE approval.
- What is OSE Charter, purpose? Should be code compliance.
- Mandatory prebids should be at the discretion of Agency/AE.
- Minimum 2 years (or more) between manual revisions.
- Due consideration should be given to adequate fees for Renovation and complex projects.
- Stress to Agencies that fees presented in Procurement Code are, in fact, guidelines.
- Too much is being included in "Basic Services."
- Why is "Location" an Evaluation Criteria when Agencies hire out of state firms?
- Interviews should be always conducted in two rooms and the Interview/Selection committee should rotate between rooms.
- Fee percentage guidelines do not consider technology type systems such as public address, fire alarm, etc. Design effort is considerable and the fee percentage based on installation cost is inadequate compensation.
- Article 4.16: A/E should not be responsible for 15% premium of error/omission change order on the first change order dollar. Should have a threshold before applying a penalty. Suggest 4% of construction cost. The Standard of Care does not require perfection and the fee percentage absolutely does not pay for perfection. If perfection is required in State contracts, fees should be increase by an additional 10% of construction cost.
- Field Investigations are not clearly defined.
- Provide alerts on Manual updates via internet/E-mails.
- Provide periodic workshops on Manuals, especially for Manual revisions.

End